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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225722
Party	Defendant inXile Entertainment, Inc.
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Date	04/30/2018
Attachments	Fargo Declaration - Public.pdf(725074 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES
INCORPORATED

Opposer,

v.

INXILE ENTERTAINMENT, INC.

Applicant.

Opposition No. 91225722

Serial No. 86/702,458

TESTIMONIAL DECLARATION OF BRIAN FARGO

I, Brian Fargo, declare under penalty of perjury under the laws of the United States as follows:

1. I am the founder and Chief Executive Officer of Applicant inXile Entertainment, Inc. (“inXile”). I have personal knowledge of the matters stated herein, and the documents attached hereto are business records of inXile, kept in the ordinary course of inXile’s business, except where indicated.

2. I have been in the computer gaming business my entire adult life. I started my first computer gaming company when I was still in high school and released my first game in 1981, the year I graduated high school. After high school, I worked for a short period of time as Vice President of Software Development for a computer gaming company. However, in 1983 I started another company, Interplay Productions, Inc., which I ran full time until I left Interplay in 2002. Shortly after I left Interplay, in 2002, I started inXile, and have been running inXile full time since then.

3. Since starting inXile, we have had released nineteen games, the most recent being Tides of Numenera and The Mage’s Tale. Tides of Numenera was released on February 28,

2017 and The Mage's Tale was released on June 20, 2017. The time from conception to actual release typically lasts at least a few years and can last up to several years. After I decide to create a new game at inXile, we typically exchange broad ideas for the game among me, the creative people, and game designers before actually going into production. This process can last many months and sometimes more than a year, depending in part on what other games are in production at the time and what resources are available. Exchanging and discussing broad concepts for a new game freely and without deadlines before moving deep into production allows my team to think creatively about the game, without the pressure of incurring significant costs associated with the actual production of the game. I have knowledge of other gaming companies' processes, and the process I describe above is fairly typical in the computer gaming industry.

4. At any given time, we normally have a pipeline of two or three games, although most of our time is focused on the development of our next to be released game. While we take on the enormous amount of work necessary to finish a game for release, we also have another game or two in the discussion and/or design stages. In 2015, we were very busy working to finalize and release Wasteland 2: Director's Cut. Through 2016 and into 2017, we were very busy working on Torment: Tides of Numenera (which was released on February 28, 2017), The Mage's Tale (which was released on June 20, 2017) and The Bard's Tale IV, which we continue to work on.

5. This Opposition proceeding involves inXile's intent to use application for "AUTODUEL" for "Providing online downloadable computer and video game programs; Interactive video game programs." At the time inXile filed its application on July 23, 2015, I was generally aware of the Origin Systems Autoduel computer game from the 1980s, but I knew

that game had not been available for more than 20 years. I was not aware of any of SJG's prior uses of Autoduel in connection with its Car Wars game supplements, although I have become aware of those as a result of this Opposition proceeding. However, all of the uses of which I have become aware ceased approximately 20 years ago as well.

6. At some point in 2013, I became aware that a company called Big Boat Interactive had filed an intent to use application for "AUTODUEL" for "computer game software for personal computers and home video game consoles." At the time I learned of this, Maxx Kaufman was with Pixelbonic, which was working on a Kickstarter campaign with Big Boat Interactive for a computer game they intended to call "Autoduel." I learned from Mr. Kaufman that SJG objected to use of the name "Autoduel" and filed an Opposition to Big Boat Interactive's application for registration. I learned that Pixelbonic/Big Boat interactive decided it was easier to change the name than dispute the trademark issues over "Autoduel." At the time, Mr. Kaufman was also working part-time for inXile, but inXile was not involved in the Pixelbonic/Big Boat Interactive Kickstarter project. Mr. Kaufman discussed the issues with me, at which time I told Mr. Kaufman I thought he should pursue use of "Autoduel" because I thought SJG did not own trademark rights in that term. I still believe this to be the case.

7. Indeed, during that time period, I learned from searching the USPTO website that SJG had long ago abandoned its only registration for "AUTODUEL!" At some point, I also learned that on May 23, 2013, apparently due to Big Boat Interactive's trademark application filing, SJG filed an application to register "AUTODUEL" for "digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, board games, and roleplaying games." SJG claimed a first use in commerce of "at least as early as 01/06/2005," which, based on what I have learned in this proceeding presumably

referred to the time when SJG uploaded to www.warehouse23.com archived some of the back issues from the 1980s and early 1990s that included the word “autoduel.”

8. On information and belief, on March 31, 2014, the Trademark Office issued a Notice of Abandonment of SJG’s trademark application and, although the application was temporarily revived, the Trademark Office issued another Notice of Abandonment on November 28, 2014.

9. Based on the information of which I was aware, as of shortly before July 23, 2015, I knew Origin Systems had stopped selling the computer game Autoduel more than 20 years ago, and that SJG had abandoned all trademarks and trademark applications for “AUTODUEL.” I was aware of no other uses of “AUTODUEL” by anyone. Therefore, as of shortly before July 23, 2015, I understood that the mark “AUTODUEL” was available.

10. I have considered for many years the possibility of developing a post-apocalyptic computer game that would include battling vehicles. This is a fairly popular genre whose themes have been in popular movies such as the Mad Max franchise. In 2015, I decided to proceed with the design and development of such a game, and after I confirmed that “Autoduel” was available for a name, I decided to name my game “Autoduel.”

11. inXile filed its intent to use application in the United States on July 23, 2015. inXile has also filed trademark applications for “Autoduel” in Australia, Canada, China, South Korea and the European Union. Registrations for Autoduel have been issued to inXile in China, South Korea and the European Union. The applications in Australia and Canada are pending.

12. Shortly after we filed the application in the United States, a website that covers the gaming industry, apparently learned of our trademark filing and wrote a note about it. Others who cover the industry picked up on the note. After PC Gamer wrote an article about inXile’s

trademark application on October 22, 2015, the Redner Group, which does public relations for inXile, received a request for a comment about inXile's plans for the AUTODUEL game. At that time, I informed Redner Group that it was too early to comment. I typically do not comment on games that are early in the design process. Attached hereto as **Exhibit 54** is a true and correct copy of an October 22, 2015 email exchange between me and Jim Redner of the Redner Group.

13. At inXile, much of the design process involves informally and verbally sharing ideas and concepts for the games we have planned. We typically do not create a lot of documents in the early stages. Nonetheless, inXile has produced several documents in this case that confirm our intent to use "Autoduel."

14. Attached hereto as **Exhibit 55** is a true and correct copy of a November 11, 2015 email from me to others listed at inXile. In that email, I forwarded an article I had read on a gaming industry website, and commented to my design and development team: "It will be a fine line we walk with Autoduel for mobile when we decide to start designing it." I was referring to a mobile phone version of Autoduel, which is one of the versions of the Autoduel game we are considering.

15. Attached hereto as **Exhibit 56** is a true and correct copy of an email from Eric Daily to me dated December 4, 2015. Mr. Daily is and was at the time a Producer at inXile. In his email, which has the subject line "Wasteland: Autoduel mobile," he refers to a conversation he overheard between me and "George," who is George Ziets, who was at the time and is a lead writer at inXile, about a mobile vehicular combat game, i.e., Autoduel. Mr. Daily was giving me some ideas for the Autoduel game we were and are planning.

16. Attached hereto as **Exhibit 57** is a true and correct copy of an email exchange on January 11, 2016 between Chris Keenan, who is and was at the time Vice President of Development at inXile, and me regarding the “mobile focused Autoduel product.”

17. Attached hereto as **Exhibit 58** is a true and correct copy of a January 19, 2016 email from Thomas Beekers to me. Mr. Beekers was and is Creative Producer at inXile. Mr. Beekers forwarded some articles from the trade press regarding marketing initiatives. He noted “I suspect if we do wind up crafting a smaller title for mobiles in AutoDuel we’ll have to heavily explore a lot of this more creative marketing”

18. Attached hereto as **Exhibit 59** is a true and correct copy of a February 18, 2016 email from Mr. Keenan to me. Mr. Keenan forwarded an article to me about “where the industry is headed” and noted: “Certainly will need to keep this in mind for Autoduel though.”

19. Attached hereto as **Exhibit 60** are email exchanges between persons at Pixel Dash Studios and persons at inXile from April 5 through April 12, 2016. The emails refer to a proposal Pixel Dash made to inXile for Autoduel. Pixel Dash is an outside studio that was aware of inXile’s plans for Autoduel and made the proposal in an effort to work with inXile on Autoduel. Pixel Dash’s April 5, 2016 proposal is also attached hereto. One of the emails from Matt Findley of inXile notes that Mr. Findley had talked to me about Pixel Dash’s proposal for Autoduel, and Mr. Findley was forwarding my general comments on their proposal.

20. Attached hereto as **Exhibit 61** is an email I received from Mr. Beekers on May 30, 2016, with which he attached a “pitch” for his ideas for the Autoduel game. The thirteen page pitch is also attached hereto.

21. On January 5, 2017, Mr. Daily sent me an email with some thoughts about using “Autoduel” and possibly including independent developers. At that time, we were approaching

the release of Torment, so it would be normal for Mr. Daily to be thinking about other projects in the pipeline to turn his attention to. On that same day, I responded to Mr. Daily. I indicated that Mr. Beekers had already prepared an initial design for Autoduel and that we would bring Mr. Daily into the loop. Attached hereto as **Exhibit 62** is a true and correct copy of the January 5, 2017 email exchange.

22. inXile completed and released Torment on February 28, 2017. This freed up resources at inXile to focus on moving forward with other games in the pipeline. Shortly after the release of Torment, I formally assigned Mr. Daily as the Producer of Autoduel at inXile. Thereafter I assigned Thomas Beekers to be the Designer of Autoduel. Autoduel is now one of four new games inXile is working on. inXile's recent work on Autoduel has included researching other games in the market, continuing work on design and design documents, and continuing work on concept and concept art.


23. inXile intended to use "Autoduel" for its game on July 23, 2015, and still intends to use it. On the other hand, although SJG claims it has continued to use the mark and intends to do so in the future, I have seen no evidence to support such a claim. I believe that SJG is simply trying to prevent others from using the name even though SJG has not used it for years and has no intent to use it.

24. I understand that SJG has uploaded PDF back issues of Autoduel Quarterly and certain other publications from the 1980s and 1990s to SJG's www.warehouse23.com website, and that this is the only claimed continuing use of the "autoduel" mark by SJG. Therefore, it is my understanding that a consumer can acquire these back issues in pdf format only at the www.warehouse23.com website. This is the only place a consumer can acquire any "autoduel" product.

25. inXile's application for registration for "Autoduel" is for "[p]roviding online downloadable computer and video game programs; Interactive video game programs." Like inXile's other games, its Autoduel game will be sold through third party gaming sites, such as iTunes and Steam.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of April, 2018, at Newport Beach, California



Brian Fargo

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for Applicant INXILE ENTERTAINMENT, INC., in the above-captioned Opposition proceeding and that on the date which appears below, he caused a copy of the foregoing **TESTIMONIAL DECLARATION OF BRIAN FARGO** to be served on Opposer's counsel below by email:

Opposer's Counsel of Record:

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Dated: April 30, 2018
Costa Mesa, California

/Ronald P. Oines/
Ronald P. Oines

EXHIBIT 54

Brian Fargo

From: Brian Fargo
Sent: Thursday, October 22, 2015 12:50 PM
To: Jim Redner
Cc: Thomas Beekers
Subject: Re: Autoduel?

Way too early to comment....

Brian Fargo
CEO/Leader inXile
2727 Newport Blvd. #200
Newport Beach CA 92663

> On Oct 22, 2015, at 2:44 PM, Jim Redner <jimredner@therednergroup.com> wrote:

>
> Hey Folks
>
> Any comment on Autoduel?
>
> Seems like you are sparking fires.
>
> Let me know if you don't want to comment.
>
> Jim Redner
> theRednerGroup
> 323.217.4314
> PSN: therednergroup1
> XBLA: therednergroup1
> www.theRednerGroup.com
>
>

> -----Original Message-----

> From: Andy Chalk [mailto:andy.chalk@pcgamer.com]
> Sent: Thursday, October 22, 2015 12:42 PM
> To: Jim Redner <jimredner@therednergroup.com>
> Subject: Autoduel?

>
> Hey Jim, it's Andy at PC Gamer. Any chance we could get a confirmation of/comment on reports that InXile has trademarked Autoduel (and which Brian Fargo tweeted about)?

>
> Thanks!

>
> Andy

>
>
> --

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EXHIBIT 55

TESTIMONIAL DECLARATION OF
BRIAN FARGO

EXHIBIT 55

**REDACTED – CONTAINS ATTORNEY'S
EYES ONLY INFORMATION**

EXHIBIT 56

TESTIMONIAL DECLARATION OF
BRIAN FARGO

EXHIBIT 56

**REDACTED – CONTAINS ATTORNEY'S
EYES ONLY INFORMATION**

EXHIBIT 57

TESTIMONIAL DECLARATION OF
BRIAN FARGO

EXHIBIT 57

**REDACTED – CONTAINS ATTORNEY’S
EYES ONLY INFORMATION**

EXHIBIT 58

TESTIMONIAL DECLARATION OF
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EXHIBIT 62

TESTIMONIAL DECLARATION OF
BRIAN FARGO

EXHIBIT 62

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